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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RONNY P., a Person Coming Under the Juvenile Court Law.	B166593
THE PEOPLE, Plaintiff and Respondent, v. RONNY P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. VJ26909)

APPEAL from the orders of the Superior Court of Los Angeles County. Philip K. Mautino, Judge. Affirmed.

Law Offices of Kimberly Jackson Lee and Kimberly Jackson Lee for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Margaret E. Maxwell and Susan S. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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* Under California Rules of Court, rules 976(b) and 976.1, only the Introduction, part IV of the Discussion, and the Disposition are certified for publication.

INTRODUCTION

After finding appellant Ronny P. in violation of Penal Code sections 245, subdivision (a)(1), 243, subdivision (d), and 415.5, subdivision (a), the juvenile court declared appellant a delinquent ward of the court under Welfare and Institutions Code section 602. The juvenile court took custody of appellant from his parents, placed appellant in the custody and control of the probation officer, ordered appellant committed to the Camp Community Placement Program for a minimum of 120 days, and specified the maximum period of physical confinement as four years nine months. In the published portion of this opinion, we conclude the 120-day minimum period of confinement in camp is authorized by Welfare and Institutions Code section 730. In the unpublished portion of the opinion, we address appellant's remaining contentions concerning sufficiency of the evidence, discretion to declare the offenses to be misdemeanors, and the camp placement order. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On the morning of September 25, 2002, Jesus P., a 15-year-old high school sophomore, was standing in the snack line at school when appellant, a 16-year-old junior, shoved him aside and cut into the line. Jesus and appellant argued. Jesus bought his snack and left the line. Later, Jesus and several companions walked back toward the snack line to purchase another snack. Appellant and two companions were sitting on a bench near the snack line. Appellant walked over to Jesus and challenged him to a fight. Appellant "opened his arms, took his jacket off and stared [Jesus] down." Jesus asked appellant, "do you have a staring problem?" Appellant replied, "do you want to fight?" Racial epithets were exchanged. Jesus, who was captain of the junior varsity football team, knew he would be suspended from the team if he became involved in a fight at school. He said, "forget this, I've got a football game tomorrow," turned his head to face the other way and began to leave. Appellant then punched Jesus in the face. Jesus fell, banging his head on the concrete floor. Jesus lost consciousness.

He sustained a concussion, a fractured nose, a fractured cheekbone, and fractured eye socket bones. Jesus had surgery and was hospitalized for three days for his injuries. Subsequently, Jesus continued to suffer headaches and pains in his head and face.

A three-count petition alleged appellant had committed assault by means likely to produce great bodily injury, in violation of Penal Code section 245, subdivision (a)(1), battery inflicting serious bodily injury, in violation of Penal Code sections 242 and 243, subdivision (d), and disturbing the peace of school by fighting, in violation of Penal Code section 415.5, subdivision (a).

At the hearing on the allegations of the petition, appellant testified as follows. He punched Jesus out of fear and panic. Jesus had started the incident by pushing appellant in the snack line and accusing appellant of cutting. Appellant was the one who initially defused the situation by walking away. Jesus and his football companions walked over to appellant to renew the quarrel. Jesus confronted appellant with fists clenched. Jesus pushed appellant with his chest. Appellant believed Jesus and Jesus's companions were going to hit appellant. Jesus did not turn his head or step away before appellant punched him. Appellant's trial counsel argued Jesus and the other prosecution witnesses were not credible, and appellant punched Jesus in self-defense or imperfect self-defense.

The juvenile court found all three counts to be true. Appellant asked the juvenile court to declare the offenses of assault by means of force likely to produce great bodily injury and battery on a person inflicting serious bodily injury misdemeanors.[1] In support of the request, appellant argued the following: Jesus was the aggressor; appellant did not realize his single punch would cause such extensive damage; appellant was a very good student and had no prior record of problems at school or with the police; appellant had stayed out of trouble while

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[1] Assault by means of force likely to produce great bodily injury and battery on a person inflicting serious bodily injury may be punished as either felonies or misdemeanors. (Pen. Code, §§ 245, subd. (a)(1), 243, subd. (d).) Offenses punishable as either a felony or misdemeanor are "so-called 'wobbler'" offenses. (E.g., *In re Manzy W.* (1997) 14 Cal.4th 1199, 1206.)

awaiting trial; the punch was an unpremeditated act; and appellant had paid for his mistake because Jesus's companions had subsequently beaten appellant. The juvenile court declared the offenses felonies.

The probation officer recommended a camp placement, because appellant had struck Jesus, causing severe injuries, when appellant had other options available to him, such as walking away. The juvenile court considered the Probation Officer's Report, which contained the following information concerning appellant. Appellant lived with his mother, step-father, and brother. He had no prior arrest record and his behavior at home was satisfactory. His school attendance was satisfactory and his grades were very good to excellent. He had received academic awards in English. Appellant argued the juvenile court should order him placed home on probation.

DISCUSSION

I. Sufficiency of the Evidence

Appellant contends the evidence is insufficient to support the finding he committed assault by means likely to produce great bodily injury. Appellant further contends the evidence was insufficient to support a finding he did not act in self-defense. We disagree with the contentions.

A. Standard of Review

"We review the evidence in the light most favorable to the wardship order. . . . [The] standard of proof is the same in juvenile proceedings as that required in adult criminal trials . . . ." (*In re Eduardo D.* (2000) 81 Cal.App.4th 545, 547.) "In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is,

evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the appellant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 317-320.)

"'It was the function of the [trier of fact], not this court, to resolve inconsistencies and contradictions, if any, in the testimony of [the witness]. The trier of fact may believe and accept a portion of the testimony of a witness and disbelieve the remainder. On appeal that portion which supports the judgment must be accepted, not that portion which would defeat, or tend to defeat, the judgment. [Citations.] A judgment cannot be set aside on appeal unless it clearly appears that on no hypothesis whatever is there sufficient substantial evidence to sustain it. [Citation.] . . . Testimony is not inherently improbable unless it appears that what was related or described could not have occurred. [Citation.]'" (*People v. Sanders* (1962) 206 Cal.App.2d 479, 482.)

B. Assault By Means Of Force Likely To Produce Great Bodily Injury

Penal Code section 245, subdivision (a)(1) provides: "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment." "[A]ssault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and

directly result in the application of physical force against another." (*People v. Williams* (2001) 26 Cal.4th 779, 790.) Great bodily injury is significant or substantial bodily injury. (CALJIC No. 9.02.) "[T]he use of hands or fists alone [has been held sufficient to] support a conviction of assault 'by means of force likely to produce great bodily injury' . . . ." (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) A punch to the face, inflicted without warning and with great force, may be an assault by means likely to produce great bodily injury. (*People v. Fierro* (1991) 1 Cal.4th 173, 251; *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1161.)

There is evidence in the record appellant struck Jesus without warning, after Jesus had turned away and begun to retreat. So much force was used that the blow fractured Jesus's nose, cheekbone, and bones around one of his eyes. Further, the blow knocked Jesus to the ground. Jesus lost consciousness and sustained a concussion. Surgery and a three-day hospital stay were required. This is sufficient evidence to support the finding appellant committed assault by means of force likely to produce great bodily injury.

C. Self-Defense

"'To justify an act of self-defense for [an assault charge under Penal Code section 245], the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him. [Citation.]' [Citation.] The threat of bodily injury must be imminent [citation] and '. . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.]' [Citations.]" (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064-1065.) "'A person claiming self-defense is required to "prove his own frame of mind" . . . .' [Citation.]" (*Id*. at p. 1065.)

There was evidence appellant initiated both confrontations with Jesus. Initially, appellant shoved Jesus aside and cut into the line. When Jesus returned to purchase a second snack, appellant approached him and challenged him to fight. Appellant waited until Jesus had indicated he was not going to fight and turned to walk away. Appellant then blindsided Jesus with a punch to the face. This was evidence appellant was the aggressor and Jesus did not

pose an imminent threat to appellant. The theory of self-defense was argued, and rejected, in the juvenile court. The theory Jesus and the other prosecution witnesses were not credible was argued, and rejected, in the juvenile court. Credibility determinations and the weight of the evidence are matters for the juvenile, not the appellate, court. We conclude substantial evidence supports the finding appellant did not act in self-defense.

II. Wobblers

Appellant contends the trial court abused its discretion when it denied the motion to declare the offenses of assault by means of force likely to produce great bodily injury and battery on a person inflicting serious bodily injury misdemeanors. We disagree.

Welfare and Institutions Code section 702 provides, in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." Trial courts have broad discretion to determine whether an offense is a misdemeanor or felony, "the exercise of which should be reviewed in accordance with the generally applicable standard." (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 972.) "The governing canons are well established: 'This discretion . . . is neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice. [Citations.]' [Citation.]" (*Id*. at p. 977.) In exercising its discretion, relevant factors include "'the nature and circumstances of the offense, the [minor's] appreciation of and attitude toward the offense . . . .' [Citations.]" (*Id*. at p. 978.) When appropriate, judges should also consider general sentencing objectives, such as protecting society, punishment, and deterring a minor from future criminal conduct. (*Id*. at p. 978 & fn. 5.) A high level of violence displayed by a minor, and serious injuries incurred by the victim, may strongly militate against misdemeanor treatment. (*In re Eduardo D., supra*, 81 Cal.App.4th at p. 549.)

On appeal, "'[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.' [Citation.] Concomitantly, '[a] decision will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.]' [Citation.]" (*People v. Superior Court (Alvarez), supra,* 14 Cal.4th at pp. 977-978.)

The juvenile court's decision to declare the offenses felonies is supported by the nature and circumstances of the offense, appellant's lack of appreciation for the seriousness of his offense, his attitude toward the offense, and general sentencing objectives. Appellant was the aggressor throughout the entire episode. He blindsided Jesus with a forceful punch to the face after Jesus had turned away in retreat. Serious, long-term injuries resulted. Appellant blamed Jesus for the confrontations and did not acknowledge his role. Felony treatment in this case, which carries a longer maximum period of confinement than misdemeanor treatment, serves the general sentencing objectives of protecting society, punishing appellant and deterring appellant from future criminal conduct. We conclude the decision to declare the offenses felonies was not an abuse of discretion.

III. Camp Community Placement

Appellant contends the trial court abused its discretion in ordering him placed in the Camp Community Placement Program instead of home on probation. We disagree.

"A juvenile court's [camp] commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.] '"We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them."' [Citation.]" (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.) A camp commitment is not an abuse of discretion when it

comports with the policies announced in Welfare and Institutions Code section 202 and takes into account not only the gravity of the offense but also the other circumstances unique to the minor. (*Id*. at p. 1330.)

Welfare and Institutions Code section 202 provides, in pertinent part, that delinquent minors "(b) . . . shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. [¶] . . . [¶] (d) Juvenile courts . . . shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter." Punishment is defined as "the imposition of sanctions." (Welf. & Inst. Code, § 202, subd. (e).) Punishment includes "(4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch." (*Ibid*.) Welfare and Institutions Code section 725.5 provides that, in determining disposition, "the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history."

The camp placement order in this case comports with the legislative policies declared in Welfare and Institutions Code section 202 and is supported by the considerations set forth in Welfare and Institutions Code section 725.5. Appellant, who was sufficiently mature and intelligent to reflect and appreciate the gravity of his mistake, refused to acknowledge his role in causing his schoolmate serious, lasting injury. Appellant instigated a confrontation and assaulted the victim without provocation. He blamed the victim. A camp placement will hold appellant accountable. The punishment will encourage appellant to acknowledge the seriousness of his offense and his responsibility for the victim's injuries. Accordingly, the record supports a conclusion that the camp placement is consistent with appellant's best interest, holds him accountable and is appropriate for his circumstances. Appellant's lack of a prior record, satisfactory school record, and stable home environment do not compel a different

result. We conclude the order committing appellant to the Camp Community Placement Program was a proper exercise of discretion.

IV. Authority To Order Minimum Period of Camp Confinement

Appellant contends the juvenile court exceeded its statutory authority when it imposed a minimum period of confinement in camp.[2] He argues the probation officer, not the juvenile court, is authorized to determine a minor's minimum period of confinement in camp. He argues further that a minimum period of confinement in camp set at the outset by the juvenile court undermines the rehabilitative objectives of the juvenile law, in that it diminishes the juvenile's incentive to progress toward rehabilitation. Although a minimum period of confinement in camp is not expressly authorized by statute, we conclude that such an order is authorized by the broad discretion afforded to juvenile courts to make dispositional orders and impose conditions under Welfare and Institutions Code section 730. (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 622.)

Section 730 of the Welfare and Institutions Code authorizes the juvenile court to place a delinquent ward under the care, custody, and control of the probation officer by a camp placement order. (*In re Lance W.* (1985) 37 Cal.3d 873, 897 & fn. 20.) "When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602 [of the Welfare and Institutions Code], the court . . . may commit the minor to a juvenile . . . camp." (Welf. & Inst. Code, § 730, subd. (a).) "When a ward described in subdivision (a) is . . . committed to the care, custody, and control of the probation officer, the court may make any and all reasonable orders for the conduct of the ward . . . . The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end

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[2] Although the 120-day commitment has been served and the issue is moot as to appellant, we nevertheless address the issue because it is likely to recur and will generally be difficult to review before it becomes moot. (*In re William M.* (1970) 3 Cal.3d 16, 23.)

that justice may be done and the reformation and rehabilitation of the ward enhanced." (*Id.*, subd. (b).)

Welfare and Institutions Code section 730 does not expressly authorize the imposition of any minimum period of confinement in camp.[3] However, Welfare and Institutions Code section 730 has been broadly interpreted to authorize a juvenile court to order a juvenile confined to juvenile hall for a period of time as a condition of probation. (*In re Lance W., supra,* 37 Cal. 3d at pp. 896-899; *In re Ricardo M.* (1975) 52 Cal.App.3d 744, 750-751.) The purpose of such a confinement order is to impress upon the juvenile the seriousness of the misconduct, without the imposition of a more serious commitment. (*In re Ricardo M., supra,* 52 Cal.App.3d at p. 749.) The confinement order informs the juvenile that continued misconduct will lead to even more serious consequences and thus encourages rehabilitation. (*Ibid*.) In our view, a similar rationale supports an order for a minimum period of camp confinement.

A juvenile court does not lose direct supervision over a juvenile committed to the care, custody, and control of the probation officer by a camp placement. (See Welf. & Inst. Code, §§ 880, 881.)[4] The juvenile court's continuing authority to supervise a juvenile committed to camp is evidenced by its statutory authority to make reasonable conduct orders and impose reasonable conditions in connection with a camp placement order. (*Id.*, § 730, subd. (b).) In this respect, a camp placement order is to be distinguished from a commitment to the Youth Authority, which deprives the juvenile court of any authority to directly supervise the juvenile. (*In re Owen E.* (1979) 23 Cal.3d 398, 404-405; *In re Arthur N.* (1976) 16 Cal.3d 226, 237-238; *In re Allen N.* (2000) 84 Cal.App.4th 513, 515-516.)

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[3] Such minimum periods of camp confinement are not unusual. (See, e.g., *In re Jose Z.* (2004) 116 Cal.App.4th 953, 957; *In re Sheena K.* (2004) 116 Cal.App.4th 436, 438.) However, they have apparently not been previously challenged in a published decision.

[4] We note that the juvenile probation officer in a county is appointed and may be removed by the presiding judge of the juvenile court. (Welf. & Inst. Code, § 270.)

Based on the foregoing, we conclude that the juvenile court did not exceed its authority when it ordered a minimum period of confinement as part of its camp placement order.

DISPOSITION

The orders are affirmed.

CERTIFIED FOR PARTIAL PUBLICATION.

GRIGNON, J.

We concur:

TURNER, P. J.

MOSK, J.